

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICK KARNES,

Defendant.

4:19-CR-3051

MEMORANDUM AND ORDER

This matter is before the Court on the Magistrate Judge's Findings and Recommendation on a Guilty Plea ([filing 48](#)) recommending that the Court accept the defendant's plea of guilty. There are no objections to the findings and recommendation. Pursuant to [28 U.S.C. § 636\(b\)\(1\)\(C\)](#) and [NECrimR 11.2\(d\)](#), the Court has conducted a de novo review of the record and adopts the findings and recommendation of the Magistrate Judge.

The Court notes, however, that the Magistrate Judge's findings and recommendation recite that the defendant was advised of the right to appear before a United States District Judge and agreed to proceed before the Magistrate. But the transcript of the guilty plea proceedings ([filing 53](#)) does not reflect that the defendant was actually advised and subsequently consented. Nevertheless, defendant was advised that a District Judge would be responsible for sentencing and that the Magistrate would merely be recommending the plea be accepted by a District Judge. See [filing 53 at 9, 21](#). And where the District Judge retains final decision making power and the defendant has the opportunity to object to the Magistrate's findings and recommendations, this error is not fatal. See [United States v. Underwood](#), [597 F.3d 661, 672-73 \(5th Cir. 2010\)](#).

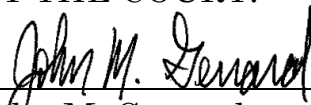
The Court also notes that neither party has objected to the findings and recommendation, meaning that any objection has been waived. See *Peretz v. United States*, 501 U.S. 923 (1991). Nonetheless, the Court has performed a de novo review of the record, and is satisfied that the defendant was not prejudiced by this particular omission on the part of the Magistrate Judge; that the defendant's plea was knowing, intelligent, and voluntary; that there is a factual basis for the plea; and that the provisions of Rule 11 have been substantially complied with.

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation on a Guilty Plea ([filing 48](#)) are adopted.
2. The defendant is found guilty. The plea is accepted. The Court finds that the plea of guilty is knowing, intelligent, and voluntary, and that a factual basis exists for the plea.
3. The Court defers acceptance of any plea agreement until the time of sentencing, pursuant to [Fed. R. Crim. P. 11\(c\)\(3\)](#). Unless otherwise stated at the time of sentencing, any plea agreement will be deemed accepted upon the pronouncement of the judgment and sentence.
4. This case shall proceed to sentencing.

Dated this 30th day of March, 2020.

BY THE COURT:

  
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John M. Gerrard  
Chief United States District Judge